

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2003**

AGENDA ITEM NO.: 10

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Expanding The Powers Of The City's Animal Wardens, Prohibiting Cruelty To Animals And Regulating Dangerous And Vicious Dogs.

RECOMMENDATION: Adoption of the attached ordinance amending sections 7-1, 7-7 and 7-35.1 of the City Code in order that the sections in the City Code dealing with the powers of the City's Animal Wardens, cruelty to animals and dangerous and vicious dogs will parallel the language of the State Code.

SUMMARY: The State Code allows local governments to adopt and enforce animal control ordinances within their localities. However, if a locality elects to adopt animal control ordinances such ordinances must parallel the comparable sections of the State Code. During the 2003 Legislative Session various sections of the State's comprehensive animal laws were amended. It is necessary to amend certain sections of the City Code to reflect the changes to the State Code. The attached ordinance (1) amends Section 7-1 of the City Code to allow the City's Animal Wardens to issue summons and obtain felony warrants to persons who violate the State's and the City's animal protection and control laws and ordinances and (2) amends Section 7-7. Cruelty to animals, and Section 7-35.1. Dangerous or vicious dogs, of the City Code so the language in the City Code will parallel the comparable sections of the State Code.

PRIOR ACTION(S): None

FISCAL IMPACT: The increase in the dangerous/vicious dog registration fee from \$50.00 to \$150.00 will help the City come closer to recovering the actual costs that are incurred in administering the dangerous/vicious dog program.

CONTACT(S): Walter C. Erwin, 847-1310 Ext. 235

ATTACHMENT(S): See attached ordinance

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 7-1, 7-7 AND 7-35.1 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTIONS RELATING TO THE POWERS OF THE CITY'S ANIMAL WARDENS, CRUELTY TO ANIMALS AND DANGEROUS AND VICIOUS DOGS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 7-1, 7-7 and 7-35.1 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 7-1. Animal warden.

The city council shall, upon nomination of the chief of police, appoint a special policeman to be known as the animal warden for the city, and deputy animal wardens whose terms of office shall be at the pleasure of the chief of police, and it shall be the special duty of the animal warden and deputy animal wardens, subject to the supervision and control of the chief of police, to enforce this chapter and the statutes of the Commonwealth relating to animals, particularly the provisions with respect to dogs contained in chapter 27.4, Title 3.1, Code of Virginia. To enable them to discharge their duties, the animal warden and deputy animal wardens shall have the power, perform the duties, and be subject to the penalties that are by law prescribed. When in uniform or upon displaying a badge or other credentials of office, the animal warden and the deputy animal wardens shall have the power to issue a summons or obtain a felony warrant as necessary, providing the execution of such warrant shall be carried out by any law-enforcement officer as defined in § 9.1-101 of the State Code to any person found in the act of violating any animal protection and control laws of the Commonwealth or any animal protection and control ordinances of the city.

Sec. 7-7. Cruelty to animals.

(a) Any person who (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific ~~or~~ or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; or (ii) deprives any animal of necessary sustenance, food, drink or shelter or emergency veterinary treatment; or (iii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibition of any kind unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; or (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; or ~~(v) or~~ carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner so as to produce torture or unnecessary suffering; or ~~(vi) or~~ causes any of the above things, or being the owner of such animal permits such acts to be done by another, shall be guilty of a class 1 misdemeanor. Prosecution for violations of this subsection shall commence within five (5) years after commission of the offense. Prosecution of this subsection regarding agricultural animals, as defined in § 3.1-796.66 of the Code of Virginia, shall commence within one (1) year after commission of the offense.

(b) Any person who abandons any dog, cat or other companion domesticated animal on in any public property, place including the right-of-way of any public highway, right-of-way, property adjacent to such highway or right-of-way, road or street or on the property of another without the written consent of the owner thereof or his agent shall be guilty of a ~~class 3~~ misdemeanor punishable by a fine of not less than two hundred fifty dollars (\$250.00) or more than two thousand five hundred dollars (\$2,500.00), either or both.

(c) Nothing in this section shall be construed to prohibit the dehorning of cattle.

(d) For the purposes of this section the word animal shall be construed to include birds and fowl.

(e) It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur, or pelt of the dog or cat. A violation of this subsection shall be a Class 1 misdemeanor.

(f) This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under the Code of Virginia or the city code, or to farming activities.

(g) In addition to the penalties provided in this section, the court may, in its discretion, require any person convicted of violating paragraph (a) to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such program or counseling upon the person convicted.

(h) For the purposes of this section the word person shall be held to include firms and corporations as well as individuals.

(i) Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

Sec. 7-35.1. Dangerous or vicious dogs.

~~(a) As used in this section: "dangerous dogs" means a canine or canine crossbreed which has bitten, attacked, or inflicted injury on a person or companion animal, livestock or any other animal, other than a dog, or killed a companion animal, livestock or any other animal, and "vicious dogs" means a canine or canine crossbreed which has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior which resulted in a previous finding by a court that it is a dangerous dog, provided that its owner has been given notice of that finding.~~

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person, companion animal, livestock or any other animal, or killed a companion animal, livestock or any other animal; however, when a dog attacks or bites another dog, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the other dog as a result of the attack or bite or (ii) both dogs are owned by the same person. No dog shall be found to be a dangerous dog as a result of biting, attacking or inflicting injury on another dog while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or an animal warden that it is a dangerous dog, provided that its owner has been given notice of that finding.

~~As used in this section, "owner"~~ owner means the current owner and any future owner of a dangerous or vicious dog.

(b) Any animal warden who has reason to believe that a canine or canine crossbreed within ~~the city their jurisdiction~~ is a dangerous dog or vicious dog shall apply to a magistrate of the city for the issuance of a summons requiring the owner or custodian, if known, to appear before the general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. The animal warden ~~or owner~~ shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal is confined by the animal warden the owner shall be responsible for paying all the costs of such confinement. If the animal warden determines that the owner or custodian can confine the dog in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing

the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Section 3.1-796.119 of the Code of Virginia.

(c) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog which was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a dangerous dog or a vicious dog.

(d) The owner of any animal found by a court to be a dangerous dog shall, within ten (10) days of such finding, obtain a dangerous dog registration certificate from the city collector for a fee of one hundred and fifty dollars (\$150.00) ~~fifty dollars (\$50.00)~~ in addition to other fees that may be authorized by law. The city collector shall also provide the owner with a uniformly designed tag which identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this section shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.

(e) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen (18) years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, and (ii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation and (iii) the animal has been neutered or spayed.

(f) While on the property of its owner, an animal found by a court to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found by a court to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(g) If the owner of an animal found by a court to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(h) After an animal has been found by a court to be a dangerous dog, the animal's owner shall immediately, upon learning of same, notify the local animal control authority if the animal (i) is loose or unconfined; (ii) bites a person or attacks another animal; (iii) is sold, given away, or dies; or (iv) has been moved to a different address.

~~(i) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen years of age or older who present satisfactory evidence that the animal has been neutered or spayed.~~

(i j) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least one hundred thousand dollars (\$100,000) ~~\$50,000~~ that covers animal bites.

(j k) Notwithstanding the provisions of paragraph (b) of this section, an animal warden may determine, after investigation, whether a dog is a dangerous dog or vicious dog. If the animal warden determines that a dog is a dangerous dog or vicious dog, he may order the animal's owner to comply with the provisions of this section. If the animal's owner disagrees with the animal warden's determination, he may appeal the determination to the general district court for a trial on the merits, such appeal must be taken within ten (10) days of the animal warden's determination. Until the general district court makes a finding that a dog is not a dangerous dog or vicious dog the animal's owner shall comply with the provisions of this section.

(k l) The owner of any animal which has been found by a court to be a dangerous dog or vicious dog who willfully fails to comply with the requirements of the ordinance shall be guilty of a class 1 misdemeanor.

(l m) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund for the purpose of paying the expenses of any training course required under section 3.1-796.105 of the Code of Virginia.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

199L